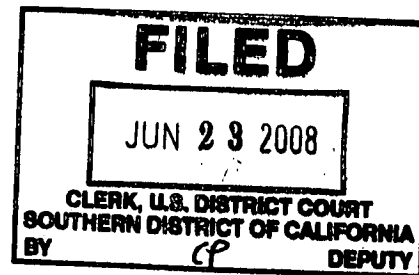


ORIGINAL

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8 Attorneys for Plaintiff

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11
12
13 Barbara Hubbard,
14 Plaintiff,
15 vs.

16 Pizza Hut, Inc. dba Pizza Hut
17 #315059; Jehova Jireh, Inc. dba
18 Subway; Hanaoka Enterprises, Inc.
19 dba Hanaoka Japanese Restaurant;
20 Clementina Deniz dba Casa de Oro,
21 Defendants.

No. '08 CV 1111 L NLS

Plaintiff's Complaint

I. SUMMARY

1. Ther is a civil rights action by plaintiff Matt Hubbard ("Hubbard") for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complexes known as:

Pizza Hut #315059
1838 Sweetwater Road
National City, CA 91950
(hereafter "the Pizza Hut Facility")

Subway #4623
1860 Sweetwater Road, Suite "C"
National City, CA 91950
(hereafter "the Subway Facility")

Hanaoka Japanese Restaurant
1528 Sweetwater Road, Suite "C"
National City, CA 91950
(hereafter "the Hanaoka Facility")

Casa de Oro
1510 Sweetwater Road, Suite "A"
National City, CA 91950
(hereafter "the Casa de Oro Facility")

(hereafter collectively referred to as "the facilities")

2. Pursuant to the Americans with Disabilities Act of 1990, (42 U.S.C. §§ 12101 et seq.), and related California statutes, Hubbard seeks damages, injunctive and declaratory relief, and attorney fees and costs, against:

- Pizza Hut, Inc. dba Pizza Hut #315059 (hereinafter the "Pizza Hut Defendant")
- Jehova Jireh, Inc. dba Subway #4623 (hereinafter the "Subway Defendant")

- 1 • Hanaoka Enterprises, Inc. dba Hanaoka Japanese Restaurant (hereinafter
- 2 the “Hanaoka Defendant”)
- 3 • Clementina Deniz dba Casa de Oro (hereinafter the “Casa de Oro
- 4 Defendant”)

5 II. JURISDICTION

6 3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and
7 1343 for ADA claims.

8 4. Supplemental jurisdiction for claims brought under parallel
9 California law—arising from the same nucleus of operative facts—is predicated
10 on 28 U.S.C. § 1367.

11 5. Hubbard’s claims are authorized by 28 U.S.C. §§ 2201 and 2202.

12 III. VENUE

13 6. All actions complained of herein take place within the jurisdiction
14 of the United States District Court, Southern District of California, and venue is
15 invoked pursuant to 28 U.S.C. § 1391(b), (c).

16 IV. PARTIES

17 7. The Pizza Hut Defendant owns, operates, and/or leases the Pizza
18 Hut Facility, and consists of a person (or persons), firm, and/or corporation.

19 8. The Subway Defendant owns, operates, or leases the Subway
20 Facility, and consists of a person (or persons), firm, and/or corporation.

21 9. The Hanaoka Defendant owns, operates, or leases the Hanaoka
22 Facility, and consists of a person (or persons), firm, and/or corporation.

23 10. The Casa de Oro Defendant owns, operates, or leases the Casa de
24 Oro Facility, and consists of a person (or persons), firm, and/or corporation.

25 11. Hubbard has multiple conditions that affect one or more major life
26 functions. She requires the use of motorized wheelchair and a mobility-equipped
27 vehicle, when traveling about in public. Consequently, Hubbard is “physically
28

1 disabled,” as defined by all applicable California and United States laws, and a
2 member of the public whose rights are protected by these laws.

3 V. FACTS

4 12. The Pizza Hut Facility is an establishment serving food and drink,
5 open to the public, which is intended for nonresidential use and whose operation
6 affects commerce.

7 13. The Subway Facility is an establishment serving food and drink,
8 open to the public, which is intended for nonresidential use and whose operation
9 affects commerce.

10 14. The Hanaoka Facility is an establishment serving food and drink,
11 open to the public, which is intended for nonresidential use and whose operation
12 affects commerce.

13 15. The Casa de Oro Facility is an establishment serving food and
14 drink, open to the public, which is intended for nonresidential use and whose
15 operation affects commerce.

16 16. Hubbard visited these facilities and encountered barriers (both
17 physical and intangible) that interfered with—if not outright denied—her ability
18 to use and enjoy the goods, services, privileges, and accommodations offered at
19 all of the facilities.

20 17. To the extent known by Hubbard, the barriers at the Pizza Hut
21 Facility included, but are not limited to, the following:

- 22 • There is no International Symbol of Accessibility (hereinafter referred to
23 as “ISA”) mounted at the entrance to indicate whether this facility is
24 accessible to the disabled;
- 25 • The counter is too high and there is no portion lowered to accommodate
26 patrons in wheelchairs;
- 27 • The salad counter is too high and there is no portion lowered to
28 accommodate patrons in wheelchairs;

- 1 • The condiment counter is too high and there is no portion lowered to
- 2 accommodate patrons in wheelchairs;
- 3 • The takeout service counter is too high and there is no portion lowered to
- 4 accommodate patrons in wheelchairs;
- 5 • There is no seating designated as being accessible to the disabled;
- 6 • There is no disabled seating;
- 7 • There is no signage provided on the strike side of the door to the restroom;
- 8 • The stall door is not self closing;
- 9 • The water closet is an obstruction to the disposable seat cover dispenser;
- 10 • The disposable seat cover dispenser is mounted behind the water closet
- 11 thereby causing it to be out of the required reach range limits;
- 12 • The disposable seat cover dispenser is mounted at more than 40 inches
- 13 from the floor;
- 14 • The toilet tissue dispenser protrudes into the clear maneuvering space
- 15 needed to access the water closet;
- 16 • The soap dispensers are out of the required reach range limits
- 17 • The operable part of the paper towel dispenser is mounted at more than 40
- 18 inches from the floor;
- 19 • The trash receptacle is an obstruction to the use of the hand dryer;
- 20 • The lavatory controls require pinching, twisting and/or grasping to
- 21 operate;
- 22 • The pipes underneath the lavatory are not wrapped to insulate from burns;
- 23 • The lock on the restroom door requires pinching, twisting, and/or
- 24 grasping; and,
- 25 • There is insufficient strike side clearance when leaving the restroom.

26 These barriers prevented Hubbard from enjoying full and equal access at the
27 Pizza Hut Facility.

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1 18. Hubbard was also deterred from visiting the Pizza Hut Facility
2 because she knew that the Pizza Hut Facility's goods, services, facilities,
3 privileges, advantages, and accommodations were unavailable to physically
4 disabled patrons (such as herself). She continues to be deterred from visiting the
5 Pizza Hut Facility because of the future threats of injury created by these
6 barriers.

7 19. To the extent known by Hubbard, the barriers at the Subway Facility
8 included, but are not limited to, the following:

- 9 • There is no ISA mounted on the latch side of the entrance door;
- 10 • There is no 36 by 24 inch clear floor space at the cash register;
- 11 • There is no seating designated as being accessible to the disabled;
- 12 • There is no disabled seating;
- 13 • The toilet tissue dispenser protrudes into the clear maneuvering space
14 needed to access the water closet;
- 15 • The trash receptacle is an obstruction to the use of the water closet;
- 16 • The side grab bar is not mounted 12 inches from the back wall;
- 17 • The side grab bar does not extend 24 inches in front of the water closet;
- 18 • The water closet is an obstruction to the disposable seat cover dispenser;
- 19 • The disposable seat cover dispenser is mounted behind the water closet
20 thereby causing it to be out of the required reach range limits;
- 21 • The disposable seat cover dispenser is mounted at more than 40 inches
22 from the floor;
- 23 • The pipes underneath the lavatory are improperly and/or incompletely
24 wrapped; and,
- 25 • The operable part of the paper towel dispenser is mounted at 49 inches
26 from the floor.

27 These barriers prevented Hubbard from enjoying full and equal access at the
28 Subway Facility.

1 20. Hubbard was also deterred from visiting the Subway Facility
2 because she knew that the Subway Facility's goods, services, facilities,
3 privileges, advantages, and accommodations were unavailable to physically
4 disabled patrons (such as herself). She continues to be deterred from visiting the
5 Subway Facility because of the future threats of injury created by these barriers.

6 21. To the extent known by Hubbard, the barriers at the Hanaoka
7 Facility included, but are not limited to, the following:

- 8 • There is no ISA mounted on the latch side of the entrance door;
- 9 • The mats at the entrance are not securely attached to the floor;
- 10 • The stall door swings into the stall;
- 11 • There is no latch on the stall door;
- 12 • The flush valve is mounted on the wrong side of the water closet tank;
- 13 • The side grab bar does not extend 24 inches in front of the water closet;
- 14 • water closet is an obstruction to the disposable seat cover dispenser;
- 15 • The disposable seat cover dispenser is mounted behind the water closet
16 thereby causing it to be out of the required reach range limits;
- 17 • The disposable seat cover dispenser is mounted at more than 40 inches
18 from the floor;
- 19 • One toilet tissue dispenser is mounted too low, while the other is mounted
20 too high and is an obstruction to the use of the side grab bar;
- 21 • The pipes underneath the lavatory are not properly and/or are incompletely
22 wrapped;
- 23 • There is no clear knee space provided at the lavatory;
- 24 • The mirror is mounted at more than 40 inches from the floor;
- 25 • The operable part of the soap/hand sanitizer dispenser is mounted at more
26 than 40 inches from the floor; and,
- 27 • The operable part of the paper towel dispenser is mounted at more than 40
28 inches from the floor.

1 These barriers prevented Hubbard from enjoying full and equal access in the
2 Hanaoka Facility.

3 22. Hubbard was also deterred from visiting the Hanaoka Facility
4 because she knew that the Hanaoka Facility's goods, services, facilities,
5 privileges, advantages, and accommodations were unavailable to physically
6 disabled patrons (such as herself). She continues to be deterred from visiting the
7 Hanaoka Facility because of the future threats of injury created by these barriers.

8 23. To the extent known by Hubbard, the barriers at the Casa de Oro
9 Facility included, but are not limited to, the following:

- 10 • The signage provided at the restroom is not correct;
- 11 • The restroom door requires twisting, pinching, and/or grasping to operate;
- 12 • The water closet is an obstruction to the disposable seat cover dispenser;
- 13 • The disposable seat cover dispenser is mounted behind the water closet
- 14 thereby causing it to be out of the required reach range limits;
- 15 • The disposable seat cover dispenser is mounted at more than 40 inches
- 16 from the floor;
- 17 • The mirror is mounted at more than 40 inches from the floor;
- 18 • The soap dispenser is mounted at more than 40 inches from the floor;
- 19 • The paper towel dispenser is mounted at more than 40 inches from the
- 20 floor; and,
- 21 • The pipes underneath the lavatory are not properly and/or are incompletely
- 22 wrapped.

23 These barriers prevented Hubbard from enjoying full and equal access.

24 24. Hubbard was also deterred from visiting the Casa de Oro Facility
25 because she knew that the Casa de Oro Facility's goods, services, facilities,
26 privileges, advantages, and accommodations were unavailable to physically
27 disabled patrons (such as herself). She continues to be deterred from visiting the
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1 Casa de Oro Facility because of the future threats of injury created by these
2 barriers.

3 25. Hubbard also encountered barriers at the facilities, which violate
4 state and federal law, but were unrelated to her disability. Nothing within this
5 Complaint, however, should be construed as an allegation that Hubbard is
6 seeking to remove barriers unrelated to her disability.

7 26. The Pizza Hut Defendant knew that these elements and areas of the
8 Pizza Hut Facility were inaccessible, violate state and federal law, and interfere
9 with (or deny) access to the physically disabled. Moreover, the Pizza Hut
10 Defendant has the financial resources to remove these barriers from the Pizza
11 Hut Facility (without much difficulty or expense), and make the Pizza Hut
12 Facility accessible to the physically disabled. To date, however, the Pizza Hut
13 Defendant refuses to either remove those barriers or seek an unreasonable
14 hardship exemption to excuse non-compliance.

15 27. At all relevant times, the Pizza Hut Defendant has possessed and
16 enjoyed sufficient control and authority to modify the Pizza Hut Facility to
17 remove impediments to wheelchair access and to comply with the Americans
18 with Disabilities Act Accessibility Guidelines and Title 24 regulations. The
19 Pizza Hut Defendant has not removed such impediments and has not modified
20 the Pizza Hut Facility to conform to accessibility standards. The Pizza Hut
21 Defendant has intentionally maintained the Pizza Hut Facility in its current
22 condition and has intentionally refrained from altering the Pizza Hut Facility so
23 that it complies with the accessibility standards.

24 28. Hubbard further alleges that the (continued) presence of barriers at
25 the Pizza Hut Facility is so obvious as to establish the Pizza Hut Defendant's
26 discriminatory intent.¹ On information and belief, Hubbard avers that evidence
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¹ E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6
Hubbard v. Pizza Hut, Inc., et al.
Plaintiff's Complaint

1 of this discriminatory intent includes the Pizza Hut Defendant's refusal to adhere
2 to relevant building standards; disregard for the building plans and permits
3 issued for the Pizza Hut Facility; conscientious decision to the architectural
4 layout (as it currently exists) at the Pizza Hut Facility; decision not to remove
5 barriers from the Pizza Hut Facility; and allowance that the Pizza Hut Facility
6 continues to exist in its non-compliant state. Hubbard further alleges, on
7 information and belief, that the Pizza Hut Defendant is not in the midst of a
8 remodel, and that the barriers present at the Pizza Hut Facility are not isolated (or
9 temporary) interruptions in access due to maintenance or repairs.²

10 29. The Subway Defendant knew that these elements and areas of the
11 Subway Facility were inaccessible, violate state and federal law, and interfere
12 with (or deny) access to the physically disabled. Moreover, the Subway
13 Defendant has the financial resources to remove these barriers from the Subway
14 Facility (without much difficulty or expense), and make the Subway Facility
15 accessible to the physically disabled. To date, however, the Subway Defendant
16 refuses to either remove those barriers or seek an unreasonable hardship
17 exemption to excuse non-compliance.

18 30. At all relevant times, the Subway Defendant has possessed and
19 enjoyed sufficient control and authority to modify the Subway Facility to remove
20 impediments to wheelchair access and to comply with the Americans with
21 Disabilities Act Accessibility Guidelines and Title 24 regulations. The Subway
22 Defendant has not removed such impediments and has not modified the Subway
23 Facility to conform to accessibility standards. The Subway Defendant has
24 intentionally maintained the Subway Facility in its current condition and has
25 intentionally refrained from altering the Subway Facility so that it complies with
26 the accessibility standards.

27
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² Id.; 28 C.F.R. § 36.211(b)
Hubbard v. Pizza Hut, Inc., et al.
Plaintiff's Complaint

1 31. Hubbard further alleges that the (continued) presence of barriers at
2 the Subway Facility is so obvious as to establish the Subway Defendant's
3 discriminatory intent.³ On information and belief, Hubbard avers that evidence
4 of this discriminatory intent includes the Subway Defendant's refusal to adhere
5 to relevant building standards; disregard for the building plans and permits
6 issued for the Subway Facility; conscientious decision to the architectural layout
7 (as it currently exists) at the Subway Facility; decision not to remove barriers
8 from the Subway Facility; and allowance that the Subway Facility continues to
9 exist in its non-compliant state. Hubbard further alleges, on information and
10 belief, that the Subway Defendant is not in the midst of a remodel, and that the
11 barriers present at the Subway Facility are not isolated (or temporary)
12 interruptions in access due to maintenance or repairs.⁴

13 32. The Hanaoka Defendant knew that these elements and areas of the
14 Hanaoka Facility were inaccessible, violate state and federal law, and interfere
15 with (or deny) access to the physically disabled. Moreover, the Hanaoka
16 Defendant has the financial resources to remove these barriers from the Hanaoka
17 Facility (without much difficulty or expense), and make the Hanaoka Facility
18 accessible to the physically disabled. To date, however, the Hanaoka Defendant
19 refuses to either remove those barriers or seek an unreasonable hardship
20 exemption to excuse non-compliance.

21 33. At all relevant times, the Hanaoka Defendant has possessed and
22 enjoyed sufficient control and authority to modify the Hanaoka Facility to
23 remove impediments to wheelchair access and to comply with the Americans
24 with Disabilities Act Accessibility Guidelines and Title 24 regulations. The
25 Hanaoka Defendant has not removed such impediments and has not modified the
26 Hanaoka Facility to conform to accessibility standards. The Hanaoka Defendant
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28 ³ E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6

⁴ Id.; 28 C.F.R. § 36.211(b)

Hubbard v. Pizza Hut, Inc., et al.

Plaintiff's Complaint

1 has intentionally maintained the Hanaoka Facility in its current condition and has
2 intentionally refrained from altering the Hanaoka Facility so that it complies with
3 the accessibility standards.

4 34. Hubbard further alleges that the (continued) presence of barriers at
5 the Hanaoka Facility is so obvious as to establish the Hanaoka Defendant's
6 discriminatory intent.⁵ On information and belief, Hubbard avers that evidence
7 of this discriminatory intent includes the Hanaoka Defendant's refusal to adhere
8 to relevant building standards; disregard for the building plans and permits
9 issued for the Hanaoka Facility; conscientious decision to the architectural
10 layout (as it currently exists) at the Hanaoka Facility; decision not to remove
11 barriers from the Hanaoka Facility; and allowance that the Hanaoka Facility
12 continues to exist in its non-compliant state. Hubbard further alleges, on
13 information and belief, that the Hanaoka Defendant is not in the midst of a
14 remodel, and that the barriers present at the Hanaoka Facility are not isolated (or
15 temporary) interruptions in access due to maintenance or repairs.⁶

16 35. The Casa de Oro Defendant knew that these elements and areas of
17 the Casa de Oro Facility were inaccessible, violate state and federal law, and
18 interfere with (or deny) access to the physically disabled. Moreover, the Casa de
19 Oro Defendant has the financial resources to remove these barriers from the Casa
20 de Oro Facility (without much difficulty or expense), and make the facility
21 accessible to the physically disabled. To date, however, the Casa de Oro
22 Defendant refuses to either remove those barriers or seek an unreasonable
23 hardship exemption to excuse non-compliance.

24 36. At all relevant times, the Casa de Oro Defendant has possessed and
25 enjoyed sufficient control and authority to modify the Casa de Oro Facility to
26 remove impediments to wheelchair access and to comply with the Americans
27

28 ⁵ E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6

⁶ Id.; 28 C.F.R. § 36.211(b)

Hubbard v. Pizza Hut, Inc., et al.

Plaintiff's Complaint

1 with Disabilities Act Accessibility Guidelines and Title 24 regulations. The
 2 Casa de Oro Defendant has not removed such impediments and has not modified
 3 the Casa de Oro Facility to conform to accessibility standards. The Casa de Oro
 4 Defendant has intentionally maintained the Casa de Oro Facility in its current
 5 condition and has intentionally refrained from altering the Casa de Oro Facility
 6 so that it complies with the accessibility standards.

7 37. Hubbard further alleges that the (continued) presence of barriers at
 8 the Casa de Oro Facility is so obvious as to establish the Casa de Oro
 9 Defendant's discriminatory intent.⁷ On information and belief, Hubbard avers
 10 that evidence of this discriminatory intent includes the Casa de Oro Defendant's
 11 refusal to adhere to relevant building standards; disregard for the building plans
 12 and permits issued for the Casa de Oro Facility; conscientious decision to the
 13 architectural layout (as it currently exists) at the Casa de Oro Facility; decision
 14 not to remove barriers from the Casa de Oro Facility; and allowance that the
 15 Casa de Oro Facility continues to exist in its non-compliant state. Hubbard
 16 further alleges, on information and belief, that the Casa de Oro Defendant is not
 17 in the midst of a remodel, and that the barriers present at the Casa de Oro Facility
 18 are not isolated (or temporary) interruptions in access due to maintenance or
 19 repairs.⁸

20 VI. FIRST CLAIM

21 Americans with Disabilities Act of 1990

22 Denial of "Full and Equal" Enjoyment and Use

23 (The Pizza Hut Facility)

24 38. Hubbard incorporates the allegations contained in paragraphs 1
 25 through 37 for this claim.

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 28 ⁷ E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6

⁸ Id.; 28 C.F.R. § 36.211(b)

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1 39. Title III of the ADA holds as a “general rule” that no individual
2 shall be discriminated against on the basis of disability in the full and equal
3 enjoyment (or use) of goods, services, facilities, privileges, and accommodations
4 offered by any person who owns, operates, or leases a place of public
5 accommodation. 42 U.S.C. § 12182(a).

6 40. The Pizza Hut Defendant discriminated against Hubbard by denying
7 “full and equal enjoyment” and use of the goods, services, facilities, privileges or
8 accommodations of the Pizza Hut Facility during each visit and each incident of
9 deterrence.

10 Failure to Remove Architectural Barriers in an Existing Facility

11 41. The ADA specifically prohibits failing to remove architectural
12 barriers, which are structural in nature, in existing facilities where such removal
13 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily
14 achievable” is defined as “easily accomplishable and able to be carried out
15 without much difficulty or expense.” *Id.* § 12181(9).

16 42. When an entity can demonstrate that removal of a barrier is not
17 readily achievable, a failure to make goods, services, facilities, or
18 accommodations available through alternative methods is also specifically
19 prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

20 43. Here, Hubbard alleges that the Pizza Hut Defendant can easily
21 remove the architectural barriers at the Pizza Hut Facility without much
22 difficulty or expense, and that the Pizza Hut Defendant violated the ADA by
23 failing to remove those barriers, when it was readily achievable to do so.

24 44. In the alternative, if it was not “readily achievable” for the Pizza
25 Hut Defendant to remove the Pizza Hut Facility’s barriers, then the Pizza Hut
26 Defendant violated the ADA by failing to make the required services available
27 through alternative methods, which are readily achievable.

1 Failure to Design and Construct an Accessible Facility

2 45. On information and belief, the Pizza Hut Facility was designed or
3 constructed (or both) after January 26, 1992—independently triggering access
4 requirements under Title III of the ADA.

5 46. The ADA also prohibits designing and constructing facilities for
6 first occupancy after January 26, 1993, that aren't readily accessible to, and
7 usable by, individuals with disabilities when it was structurally practicable to do
8 so. 42 U.S.C. § 12183(a)(1).

9 47. Here, the Pizza Hut Defendant violated the ADA by designing or
10 constructing (or both) the Pizza Hut Facility in a manner that was not readily
11 accessible to the physically disabled public—including Hubbard—when it was
12 structurally practical to do so.⁹

13 Failure to Make an Altered Facility Accessible

14 48. On information and belief, the Pizza Hut Facility was modified after
15 January 26, 1992, independently triggering access requirements under the ADA.

16 49. The ADA also requires that facilities altered in a manner that affects
17 (or could affect) its usability must be made readily accessible to individuals with
18 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering
19 an area that contains a facility's primary function also requires adding making
20 the paths of travel, bathrooms, telephones, and drinking fountains serving that
21 area accessible to the maximum extent feasible. *Id.*

22 50. Here, the Pizza Hut Defendant altered the Pizza Hut Facility in a
23 manner that violated the ADA and was not readily accessible to the physically
24 disabled public—including Hubbard—to the maximum extent feasible.

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28 ⁹ Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a
private attorney general under either state or federal statutes.

1 Failure to Modify Existing Policies and Procedures

2 51. The ADA also requires reasonable modifications in policies,
3 practices, or procedures, when necessary to afford such goods, services,
4 facilities, or accommodations to individuals with disabilities, unless the entity
5 can demonstrate that making such modifications would fundamentally alter their
6 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

7 52. Here, the Pizza Hut Defendant violated the ADA by failing to make
8 reasonable modifications in policies, practices, or procedures at the Pizza Hut
9 Facility, when these modifications were necessary to afford (and would not
10 fundamentally alter the nature of) these goods, services, facilities, or
11 accommodations.

12 53. Hubbard seeks all relief available under the ADA (*i.e.*, injunctive
13 relief, attorney fees, costs, legal expense) for these aforementioned violations. 42
14 U.S.C. § 12205.

15 54. Hubbard also seeks a finding from this Court (*i.e.*, declaratory
16 relief) that the Pizza Hut Defendant violated the ADA in order to pursue
17 damages under California's Unruh Civil Rights Act or Disabled Persons Act.

18 VII. SECOND CLAIM

19 **Disabled Persons Act**

20 (The Pizza Hut Facility)

21 55. Hubbard incorporates the allegations contained in paragraphs 1
22 through 54 for this claim.

23 56. California Civil Code § 54 states, in part, that: Individuals with
24 disabilities have the same right as the general public to the full and free use of
25 the streets, sidewalks, walkways, public buildings and facilities, and other public
26 places.

27 57. California Civil Code § 54.1 also states, in part, that: Individuals
28 with disabilities shall be entitled to full and equal access to accommodations,

1 facilities, telephone facilities, places of public accommodation, and other places
2 to which the general public is invited.

3 58. Both sections specifically incorporate (by reference) an individual's
4 rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

5 59. Here, the Pizza Hut Defendant discriminated against the physically
6 disabled public—including Hubbard—by denying them full and equal access to
7 the Pizza Hut Facility. The Pizza Hut Defendant also violated Hubbard's rights
8 under the ADA, and, therefore, infringed upon or violated (or both) Hubbard's
9 rights under the Disabled Persons Act.

10 60. For each offense of the Disabled Persons Act, Hubbard seeks actual
11 damages (both general and special damages), statutory minimum damages of one
12 thousand dollars (\$1,000), declaratory relief, and any other remedy available
13 under California Civil Code § 54.3.

14 61. She also seeks to enjoin the Pizza Hut Defendant from violating the
15 Disabled Persons Act (and ADA) under California Civil Code § 55, and to
16 recover reasonable attorneys' fees and incurred under California Civil Code §§
17 54.3 and 55.

18 VIII. THIRD CLAIM

19 Unruh Civil Rights Act

20 (The Pizza Hut Facility)

21 62. Hubbard incorporates the allegations contained in paragraphs 1
22 through 61 for this claim.

23 63. California Civil Code § 51 states, in part, that: All persons within
24 the jurisdiction of this state are entitled to the full and equal accommodations,
25 advantages, facilities, privileges, or services in all business establishments of
26 every kind whatsoever.

64. California Civil Code § 51.5 also states, in part, that: No business establishment of any kind whatsoever shall discriminate against any person in this state because of the disability of the person.

65. California Civil Code § 51(f) specifically incorporates (by reference) an individual's rights under the ADA into the Unruh Act.

66. The Pizza Hut Defendant's aforementioned acts and omissions denied the physically disabled public—including Hubbard—full and equal accommodations, advantages, facilities, privileges and services in a business establishment (because of their physical disability).

67. These acts and omissions (including the ones that violate the ADA) denied, aided or incited a denial, or discriminated against Hubbard by violating the Unruh Act.

68. Hubbard was damaged by the Pizza Hut Defendant's wrongful conduct, and seeks statutory minimum damages of four thousand dollars (\$4,000) for each offense.

69. Hubbard also seeks to enjoin the Pizza Hut Defendant from violating the Unruh Act (and ADA), and recover reasonable attorneys' fees and costs incurred under California Civil Code § 52(a).

IX. FOURTH CLAIM

Denial of Full and Equal Access to Public Facilities

(The Pizza Hut Facility)

70. Hubbard incorporates the allegations contained in paragraphs 1 through 69 for this claim.

71. Health and Safety Code § 19955(a) states, in part, that: California public accommodations or facilities (built with private funds) shall adhere to the provisions of Government Code § 4450.

72. Health and Safety Code § 19959 states, in part, that: Every existing (non-exempt) public accommodation constructed prior to July 1, 1970, which is altered or structurally repaired, is required to comply with this chapter.

73. Hubbard alleges the Pizza Hut Facility is a public accommodation constructed, altered, or repaired in a manner that violates Part 5.5 of the Health and Safety Code or Government Code § 4450 (or both), and that the Pizza Hut Facility was not exempt under Health and Safety Code § 19956.

74. The Pizza Hut Defendant' non-compliance with these requirements at the Pizza Hut Facility aggrieved (or potentially aggrieved) Hubbard and other persons with physical disabilities. Accordingly, she seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

X. FIFTH CLAIM

Americans with Disabilities Act of 1990

Denial of “Full and Equal” Enjoyment and Use

(The Subway Facility)

75. Hubbard incorporates the allegations contained in paragraphs 1 through 74 for this claim.

76. Title III of the ADA holds as a “general rule” that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment (or use) of goods, services, facilities, privileges, and accommodations offered by any person who owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

77. The Subway Defendants discriminated against Hubbard by denying "full and equal enjoyment" and use of the goods, services, facilities, privileges or accommodations of the Subway Facility during each visit and each incident of deterrence.

1 Failure to Remove Architectural Barriers in an Existing Facility

2 78. The ADA specifically prohibits failing to remove architectural
3 barriers, which are structural in nature, in existing facilities where such removal
4 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily
5 achievable” is defined as “easily accomplishable and able to be carried out
6 without much difficulty or expense.” *Id.* § 12181(9).

7 79. When an entity can demonstrate that removal of a barrier is not
8 readily achievable, a failure to make goods, services, facilities, or
9 accommodations available through alternative methods is also specifically
10 prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

11 80. Here, Hubbard alleges that the Subway Defendant can easily
12 remove the architectural barriers at the Subway Facility without much difficulty
13 or expense, and that the Subway Defendant violated the ADA by failing to
14 remove those barriers, when it was readily achievable to do so.

15 81. In the alternative, if it was not “readily achievable” for the Subway
16 Defendant to remove the Subway Facility’s barriers, then the Subway Defendant
17 violated the ADA by failing to make the required services available through
18 alternative methods, which are readily achievable.

19 Failure to Design and Construct an Accessible Facility

20 82. On information and belief, the Subway Facility was designed or
21 constructed (or both) after January 26, 1992—independently triggering access
22 requirements under Title III of the ADA.

23 83. The ADA also prohibits designing and constructing facilities for
24 first occupancy after January 26, 1993, that aren’t readily accessible to, and
25 usable by, individuals with disabilities when it was structurally practicable to do
26 so. 42 U.S.C. § 12183(a)(1).

27 84. Here, the Subway Defendant violated the ADA by designing or
28 constructing (or both) the Subway Facility in a manner that was not readily

1 accessible to the physically disabled public—including Hubbard—when it was
2 structurally practical to do so.¹⁰

3 Failure to Make an Altered Facility Accessible

4 85. On information and belief, the Subway Facility was modified after
5 January 26, 1992, independently triggering access requirements under the ADA.

6 86. The ADA also requires that facilities altered in a manner that affects
7 (or could affect) its usability must be made readily accessible to individuals with
8 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering
9 an area that contains a facility's primary function also requires adding making
10 the paths of travel, bathrooms, telephones, and drinking fountains serving that
11 area accessible to the maximum extent feasible. *Id.*

12 87. Here, the Subway Defendant altered the Subway Facility in a
13 manner that violated the ADA and was not readily accessible to the physically
14 disabled public—including Hubbard—to the maximum extent feasible.

15 Failure to Modify Existing Policies and Procedures

16 88. The ADA also requires reasonable modifications in policies,
17 practices, or procedures, when necessary to afford such goods, services,
18 facilities, or accommodations to individuals with disabilities, unless the entity
19 can demonstrate that making such modifications would fundamentally alter their
20 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

21 89. Here, the Subway Defendant violated the ADA by failing to make
22 reasonable modifications in policies, practices, or procedures at the Subway
23 Facility, when these modifications were necessary to afford (and would not
24 fundamentally alter the nature of) these goods, services, facilities, or
25 accommodations.

26
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28 ¹⁰ Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a
private attorney general under either state or federal statutes.

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90. Hubbard seeks all relief available under the ADA (*i.e.*, injunctive relief, attorney fees, costs, legal expense) for these aforementioned violations. 42 U.S.C. § 12205.

91. Hubbard also seeks a finding from this Court (*i.e.*, declaratory relief) that the Subway Defendant violated the ADA in order to pursue damages under California's Unruh Civil Rights Act or Disabled Persons Act.

XI. SIXTH CLAIM

Disabled Persons Act

(The Subway Facility)

92. Hubbard incorporates the allegations contained in paragraphs 1 through 91 for this claim.

93. California Civil Code § 54 states, in part, that: Individuals with disabilities have the same right as the general public to the full and free use of the streets, sidewalks, walkways, public buildings and facilities, and other public places.

94. California Civil Code § 54.1 also states, in part, that: Individuals with disabilities shall be entitled to full and equal access to accommodations, facilities, telephone facilities, places of public accommodation, and other places to which the general public is invited.

95. Both sections specifically incorporate (by reference) an individual's rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

96. Here, the Subway Defendant discriminated against the physically disabled public—including Hubbard—by denying them full and equal access to the Subway Facility. The Subway Defendant also violated Hubbard’s rights under the ADA, and, therefore, infringed upon or violated (or both) Hubbard’s rights under the Disabled Persons Act.

97. For each offense of the Disabled Persons Act, Hubbard seeks actual damages (both general and special damages), statutory minimum damages of one

1 thousand dollars (\$1,000), declaratory relief, and any other remedy available
2 under California Civil Code § 54.3.

3 98. She also seeks to enjoin the Subway Defendant from violating the
4 Disabled Persons Act (and ADA) under California Civil Code § 55, and to
5 recover reasonable attorneys' fees and incurred under California Civil Code §§
6 54.3 and 55.

7 XII. SEVENTH CLAIM

8 Unruh Civil Rights Act

9 (The Subway Facility)

10 99. Hubbard incorporates the allegations contained in paragraphs 1
11 through 98 for this claim.

12 100. California Civil Code § 51 states, in part, that: All persons within
13 the jurisdiction of this state are entitled to the full and equal accommodations,
14 advantages, facilities, privileges, or services in all business establishments of
15 every kind whatsoever.

16 101. California Civil Code § 51.5 also states, in part, that: No business
17 establishment of any kind whatsoever shall discriminate against any person in
18 this state because of the disability of the person.

19 102. California Civil Code § 51(f) specifically incorporates (by
20 reference) an individual's rights under the ADA into the Unruh Act.

21 103. The Subway Defendant' aforementioned acts and omissions denied
22 the physically disabled public—including Hubbard—full and equal
23 accommodations, advantages, facilities, privileges and services in a business
24 establishment (because of their physical disability).

25 104. These acts and omissions (including the ones that violate the ADA)
26 denied, aided or incited a denial, or discriminated against Hubbard by violating
27 the Unruh Act.

105. Hubbard was damaged by the Subway Defendant's wrongful conduct, and seeks statutory minimum damages of four thousand dollars (\$4,000) for each offense.

106. Hubbard also seeks to enjoin the Subway Defendant from violating the Unruh Act (and ADA), and recover reasonable attorneys' fees and costs incurred under California Civil Code § 52(a).

XIII. EIGHTH CLAIM

Denial of Full and Equal Access to Public Facilities

(The Subway Facility)

107. Hubbard incorporates the allegations contained in paragraphs 1 through 106 for this claim.

108. Health and Safety Code § 19955(a) states, in part, that: California public accommodations or facilities (built with private funds) shall adhere to the provisions of Government Code § 4450.

109. Health and Safety Code § 19959 states, in part, that: Every existing (non-exempt) public accommodation constructed prior to July 1, 1970, which is altered or structurally repaired, is required to comply with this chapter.

110. Hubbard alleges the Subway Facility is a public accommodation constructed, altered, or repaired in a manner that violates Part 5.5 of the Health and Safety Code or Government Code § 4450 (or both), and that the Subway Facility was not exempt under Health and Safety Code § 19956.

111. The Subway Defendant's non-compliance with these requirements at the Subway Facility aggrieved (or potentially aggrieved) Hubbard and other persons with physical disabilities. Accordingly, she seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

XIV. NINTH CLAIM

Americans with Disabilities Act of 1990

Denial of "Full and Equal" Enjoyment and Use

(The Hanaoka Facility)

112. Hubbard incorporates the allegations contained in paragraphs 1 through 111 for this claim.

113. Title III of the ADA holds as a "general rule" that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment (or use) of goods, services, facilities, privileges, and accommodations offered by any person who owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

114. The Hanaoka Defendant discriminated against Hubbard by denying "full and equal enjoyment" and use of the goods, services, facilities, privileges or accommodations of the Hanaoka Facility during each visit and each incident of deterrence.

Failure to Remove Architectural Barriers in an Existing Facility

115. The ADA specifically prohibits failing to remove architectural barriers, which are structural in nature, in existing facilities where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term "readily achievable" is defined as "easily accomplishable and able to be carried out without much difficulty or expense." *Id.* § 12181(9).

116. When an entity can demonstrate that removal of a barrier is not readily achievable, a failure to make goods, services, facilities, or accommodations available through alternative methods is also specifically prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

117. Here, Hubbard alleges that the Hanaoka Defendant can easily remove the architectural barriers at the Hanaoka Facility without much difficulty

1 or expense, and that the Hanaoka Defendant violated the ADA by failing to
2 remove those barriers, when it was readily achievable to do so.

3 118. In the alternative, if it was not “readily achievable” for the Hanaoka
4 Defendant to remove the Hanaoka Facility’s barriers, then the Hanaoka
5 Defendant violated the ADA by failing to make the required services available
6 through alternative methods, which are readily achievable.

7 Failure to Design and Construct an Accessible Facility

8 119. On information and belief, the Hanaoka Facility was designed or
9 constructed (or both) after January 26, 1992—independently triggering access
10 requirements under Title III of the ADA.

11 120. The ADA also prohibits designing and constructing facilities for
12 first occupancy after January 26, 1993, that aren’t readily accessible to, and
13 usable by, individuals with disabilities when it was structurally practicable to do
14 so. 42 U.S.C. § 12183(a)(1).

15 121. Here, the Hanaoka Defendant violated the ADA by designing or
16 constructing (or both) the Hanaoka Facility in a manner that was not readily
17 accessible to the physically disabled public—including Hubbard—when it was
18 structurally practical to do so.¹¹

19 Failure to Make an Altered Facility Accessible

20 122. On information and belief, the Hanaoka Facility was modified after
21 January 26, 1992, independently triggering access requirements under the ADA.

22 123. The ADA also requires that facilities altered in a manner that affects
23 (or could affect) its usability must be made readily accessible to individuals with
24 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering
25 an area that contains a facility’s primary function also requires adding making
26

27
28 ¹¹ Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a
private attorney general under either state or federal statutes.

1 the paths of travel, bathrooms, telephones, and drinking fountains serving that
2 area accessible to the maximum extent feasible. Id.

3 124. Here, the Hanaoka Defendant altered the Hanaoka Facility in a
4 manner that violated the ADA and was not readily accessible to the physically
5 disabled public—including Hubbard—to the maximum extent feasible.

6 Failure to Modify Existing Policies and Procedures

7 125. The ADA also requires reasonable modifications in policies,
8 practices, or procedures, when necessary to afford such goods, services,
9 facilities, or accommodations to individuals with disabilities, unless the entity
10 can demonstrate that making such modifications would fundamentally alter their
11 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

12 126. Here, the Hanaoka Defendant violated the ADA by failing to make
13 reasonable modifications in policies, practices, or procedures at the Hanaoka
14 Facility, when these modifications were necessary to afford (and would not
15 fundamentally alter the nature of) these goods, services, facilities, or
16 accommodations.

17 127. Hubbard seeks all relief available under the ADA (*i.e.*, injunctive
18 relief, attorney fees, costs, legal expense) for these aforementioned violations. 42
19 U.S.C. § 12205.

20 128. Hubbard also seeks a finding from this Court (*i.e.*, declaratory
21 relief) that the Hanaoka Defendant violated the ADA in order to pursue damages
22 under California's Unruh Civil Rights Act or Disabled Persons Act.

23 **XV. TENTH CLAIM**

24 **Disabled Persons Act**

25 **(The Hanaoka Facility)**

26 129. Hubbard incorporates the allegations contained in paragraphs 1
27 through 128 for this claim.

1 130. California Civil Code § 54 states, in part, that: Individuals with
2 disabilities have the same right as the general public to the full and free use of
3 the streets, sidewalks, walkways, public buildings and facilities, and other public
4 places.

5 131. California Civil Code § 54.1 also states, in part, that: Individuals
6 with disabilities shall be entitled to full and equal access to accommodations,
7 facilities, telephone facilities, places of public accommodation, and other places
8 to which the general public is invited.

9 132. Both sections specifically incorporate (by reference) an individual's
10 rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

11 133. Here, the Hanaoka Defendant discriminated against the physically
12 disabled public—including Hubbard—by denying them full and equal access to
13 the Hanaoka Facility. The Hanaoka Defendant also violated Hubbard's rights
14 under the ADA, and, therefore, infringed upon or violated (or both) Hubbard's
15 rights under the Disabled Persons Act.

16 134. For each offense of the Disabled Persons Act, Hubbard seeks actual
17 damages (both general and special damages), statutory minimum damages of one
18 thousand dollars (\$1,000), declaratory relief, and any other remedy available
19 under California Civil Code § 54.3.

20 135. He also seeks to enjoin the Hanaoka Defendant from violating the
21 Disabled Persons Act (and ADA) under California Civil Code § 55, and to
22 recover reasonable attorneys' fees and incurred under California Civil Code §§
23 54.3 and 55.

24 XVI. ELEVENTH CLAIM

25 Unruh Civil Rights Act

26 (The Hanaoka Facility)

27 136. Hubbard incorporates the allegations contained in paragraphs 1
28 through 135 for this claim.

1 137. California Civil Code § 51 states, in part, that: All persons within
2 the jurisdiction of this state are entitled to the full and equal accommodations,
3 advantages, facilities, privileges, or services in all business establishments of
4 every kind whatsoever.

5 138. California Civil Code § 51.5 also states, in part, that: No business
6 establishment of any kind whatsoever shall discriminate against any person in
7 this state because of the disability of the person.

8 139. California Civil Code § 51(f) specifically incorporates (by
9 reference) an individual's rights under the ADA into the Unruh Act.

10 140. The Hanaoka Defendant's aforementioned acts and omissions denied
11 the physically disabled public—including Hubbard—full and equal
12 accommodations, advantages, facilities, privileges and services in a business
13 establishment (because of their physical disability).

14 141. These acts and omissions (including the ones that violate the ADA)
15 denied, aided or incited a denial, or discriminated against Hubbard by violating
16 the Unruh Act.

17 142. Hubbard was damaged by the Hanaoka Defendant's wrongful
18 conduct, and seeks statutory minimum damages of four thousand dollars
19 (\$4,000) for each offense.

20 143. Hubbard also seeks to enjoin the Hanaoka Defendant from violating
21 the Unruh Act (and ADA), and recover reasonable attorneys' fees and costs
22 incurred under California Civil Code § 52(a).

23 XVII. TWELFTH CLAIM

24 **Denial of Full and Equal Access to Public Facilities**

25 (The Hanaoka Facility)

26 144. Hubbard incorporates the allegations contained in paragraphs 1
27 through 143 for this claim.

1 145. Health and Safety Code § 19955(a) states, in part, that: California
 2 public accommodations or facilities (built with private funds) shall adhere to the
 3 provisions of Government Code § 4450.

4 146. Health and Safety Code § 19959 states, in part, that: Every existing
 5 (non-exempt) public accommodation constructed prior to July 1, 1970, which is
 6 altered or structurally repaired, is required to comply with this chapter.

7 147. Hubbard alleges the Hanaoka Facility is a public accommodation
 8 constructed, altered, or repaired in a manner that violates Part 5.5 of the Health
 9 and Safety Code or Government Code § 4450 (or both), and that the Hanaoka
 10 Facility was not exempt under Health and Safety Code § 19956.

11 148. The Hanaoka Defendant's non-compliance with these requirements
 12 at the Hanaoka Facility aggrieved (or potentially aggrieved) Hubbard and other
 13 persons with physical disabilities. Accordingly, she seeks injunctive relief and
 14 attorney fees pursuant to Health and Safety Code § 19953.

15 XVIII. THIRTEENTH CLAIM

16 **Americans with Disabilities Act of 1990**

17 Denial of "Full and Equal" Enjoyment and Use

18 (The Casa de Oro Facility)

19 149. Hubbard incorporates the allegations contained in paragraphs 1
 20 through 148 for this claim.

21 150. Title III of the ADA holds as a "general rule" that no individual
 22 shall be discriminated against on the basis of disability in the full and equal
 23 enjoyment (or use) of goods, services, facilities, privileges, and accommodations
 24 offered by any person who owns, operates, or leases a place of public
 25 accommodation. 42 U.S.C. § 12182(a).

26 151. The Casa de Oro Defendant discriminated against Hubbard by
 27 denying "full and equal enjoyment" and use of the goods, services, facilities,
 28

1 privileges or accommodations of the Casa de Oro Facility during each visit and
2 each incident of deterrence.

3 Failure to Remove Architectural Barriers in an Existing Facility

4 152. The ADA specifically prohibits failing to remove architectural
5 barriers, which are structural in nature, in existing facilities where such removal
6 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily
7 achievable” is defined as “easily accomplishable and able to be carried out
8 without much difficulty or expense.” *Id.* § 12181(9).

9 153. When an entity can demonstrate that removal of a barrier is not
10 readily achievable, a failure to make goods, services, facilities, or
11 accommodations available through alternative methods is also specifically
12 prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

13 154. Here, Hubbard alleges that the Casa de Oro Defendant can easily
14 remove the architectural barriers at the Casa de Oro Facility without much
15 difficulty or expense, and that the Casa de Oro Defendant violated the ADA by
16 failing to remove those barriers, when it was readily achievable to do so.

17 155. In the alternative, if it was not “readily achievable” for the Casa de
18 Oro Defendant to remove the Casa de Oro Facility’s barriers, then the Casa de
19 Oro Defendant violated the ADA by failing to make the required services
20 available through alternative methods, which are readily achievable.

21 Failure to Design and Construct an Accessible Facility

22 156. On information and belief, the Casa de Oro Facility was designed or
23 constructed (or both) after January 26, 1992—independently triggering access
24 requirements under Title III of the ADA.

25 157. The ADA also prohibits designing and constructing facilities for
26 first occupancy after January 26, 1993, that aren’t readily accessible to, and
27 usable by, individuals with disabilities when it was structurally practicable to do
28 so. 42 U.S.C. § 12183(a)(1).

1 158. Here, the Casa de Oro Defendant violated the ADA by designing or
2 constructing (or both) the Casa de Oro Facility in a manner that was not readily
3 accessible to the physically disabled public—including Hubbard—when it was
4 structurally practical to do so.¹²

5 Failure to Make an Altered Facility Accessible

6 159. On information and belief, the Casa de Oro Facility was modified
7 after January 26, 1992, independently triggering access requirements under the
8 ADA.

9 160. The ADA also requires that facilities altered in a manner that affects
10 (or could affect) its usability must be made readily accessible to individuals with
11 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering
12 an area that contains a facility's primary function also requires adding making
13 the paths of travel, bathrooms, telephones, and drinking fountains serving that
14 area accessible to the maximum extent feasible. Id.

15 161. Here, the Casa de Oro Defendant altered the Casa de Oro Facility in
16 a manner that violated the ADA and was not readily accessible to the physically
17 disabled public—including Hubbard—to the maximum extent feasible.

18 Failure to Modify Existing Policies and Procedures

19 162. The ADA also requires reasonable modifications in policies,
20 practices, or procedures, when necessary to afford such goods, services,
21 facilities, or accommodations to individuals with disabilities, unless the entity
22 can demonstrate that making such modifications would fundamentally alter their
23 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

24 163. Here, the Casa de Oro Defendant violated the ADA by failing to
25 make reasonable modifications in policies, practices, or procedures at the Casa
26 de Oro Facility, when these modifications were necessary to afford (and would
27

28 ¹² Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a private attorney general under either state or federal statutes.

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Plaintiff's Complaint

1 not fundamentally alter the nature of) these goods, services, facilities, or
2 accommodations.

3 164. Hubbard seeks all relief available under the ADA (*i.e.*, injunctive
4 relief, attorney fees, costs, legal expense) for these aforementioned violations. 42
5 U.S.C. § 12205.

6 165. Hubbard also seeks a finding from this Court (*i.e.*, declaratory
7 relief) that the Casa de Oro Defendant violated the ADA in order to pursue
8 damages under California's Unruh Civil Rights Act or Disabled Persons Act.

9 **XIX. FOURTEENTH CLAIM**

10 **Disabled Persons Act**

11 (The Casa de Oro Facility)

12 166. Hubbard incorporates the allegations contained in paragraphs 1
13 through 165 for this claim.

14 167. California Civil Code § 54 states, in part, that: Individuals with
15 disabilities have the same right as the general public to the full and free use of
16 the streets, sidewalks, walkways, public buildings and facilities, and other public
17 places.

18 168. California Civil Code § 54.1 also states, in part, that: Individuals
19 with disabilities shall be entitled to full and equal access to accommodations,
20 facilities, telephone facilities, places of public accommodation, and other places
21 to which the general public is invited.

22 169. Both sections specifically incorporate (by reference) an individual's
23 rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).

24 170. Here, the Casa de Oro Defendant discriminated against the
25 physically disabled public—including Hubbard—by denying them full and equal
26 access to the Casa de Oro Facility. The Casa de Oro Defendant also violated
27 Hubbard's rights under the ADA, and, therefore, infringed upon or violated (or
28 both) Hubbard's rights under the Disabled Persons Act.

1 178. These acts and omissions (including the ones that violate the ADA)
2 denied, aided or incited a denial, or discriminated against Hubbard by violating
3 the Unruh Act.

4 179. Hubbard was damaged by the Casa de Oro Defendant's wrongful
5 conduct, and seeks statutory minimum damages of four thousand dollars
6 (\$4,000) for each offense.

7 180. Hubbard also seeks to enjoin the Casa de Oro Defendant from
8 violating the Unruh Act (and ADA), and recover reasonable attorneys' fees and
9 costs incurred under California Civil Code § 52(a).

10 **XXI. SIXTEENTH CLAIM**

11 **Denial of Full and Equal Access to Public Facilities**

12 (The Casa de Oro Facility)

13 181. Hubbard incorporates the allegations contained in paragraphs 1
14 through 180 for this claim.

15 182. Health and Safety Code § 19955(a) states, in part, that: California
16 public accommodations or facilities (built with private funds) shall adhere to the
17 provisions of Government Code § 4450.

18 183. Health and Safety Code § 19959 states, in part, that: Every existing
19 (non-exempt) public accommodation constructed prior to July 1, 1970, which is
20 altered or structurally repaired, is required to comply with this chapter.

21 184. Hubbard alleges the Casa de Oro Facility is a public accommodation
22 constructed, altered, or repaired in a manner that violates Part 5.5 of the Health
23 and Safety Code or Government Code § 4450 (or both), and that the Casa de Oro
24 Facility was not exempt under Health and Safety Code § 19956.

25 185. The Casa de Oro Defendant's non-compliance with these
26 requirements at the Casa de Oro Facility aggrieved (or potentially aggrieved)
27 Hubbard and other persons with physical disabilities. Accordingly, she seeks
28 injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

XXII. PRAYER FOR RELIEF

WHEREFORE, Hubbard prays judgment against the Pizza Hut Defendant for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Declaratory relief that the Pizza Hut Defendant violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.
3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California Civil Code (but not both) according to proof.
4. Attorneys' fees, litigation expenses, and costs of suit.¹³
5. Interest at the legal rate from the date of the filing of this action.

XXIII. PRAYER FOR RELIEF

WHEREFORE, Hubbard prays judgment against the Subway Defendant for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Declaratory relief that the Subway Defendant violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.
3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California Civil Code (but not both) according to proof.
4. Attorneys' fees, litigation expenses, and costs of suit.¹⁴
5. Interest at the legal rate from the date of the filing of this action.

XXIV. PRAYER FOR RELIEF

WHEREFORE, Hubbard prays judgment against the Hanaoka Defendant for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Declaratory relief that the Hanaoka Defendant violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.

¹³ This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

¹⁴ This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

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1 3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the
2 California Civil Code (but not both) according to proof.

3 4. Attorneys' fees, litigation expenses, and costs of suit.¹⁵

4 5. Interest at the legal rate from the date of the filing of this action.

5 XXV. PRAYER FOR RELIEF

6 WHEREFORE, Hubbard prays judgment against the Casa de Oro Defendant for:

7 1. Injunctive relief, preventive relief, or any other relief the Court deems
8 proper.

9 2. Declaratory relief that the Casa de Oro Defendant violated the ADA for
10 the purposes of Unruh Act or Disabled Persons Act damages.

11 3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the
12 California Civil Code (but not both) according to proof.

13 4. Attorneys' fees, litigation expenses, and costs of suit.¹⁶

14 5. Interest at the legal rate from the date of the filing of this action.

15
16 DATED: June 19, 2008

DISABLED ADVOCACY GROUP, APLC

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18 

19 LYNN HUBBARD, III
20 Attorney for Plaintiff, Barbara Hubbard
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28 ¹⁵ This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

¹⁶ This includes attorneys' fees under California Code of Civil Procedure § 1021.5.

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Plaintiff's Complaint

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

152183 - TC

June 23, 2008
15:10:19

Civ Fil Non-Pris

USAO #: 08CV1111

Judge.: NITA L STORMES

Amount.: \$350.00 CC

Total-> \$350.00

FROM: HUBBARD VS. PIZZA HUT
(SWEETWATER CROSSING)

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Barbara Hubbard

DEFENDANTS
SEE ATTACHED LIST

JUN 28 2008

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY CS DEPUTY

(b) County of Residence of First Listed Plaintiff SAN DIEGO
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

LYNN HUBBARD, III DISABLED ADVOCACY GROUP, APLC
12 Williamsburg Lane Chico, CA 95926 (530) 895-3252

Attorneys (If Known)

08 CV 1111 L NLS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | |
|---|---|---|---|
| Citizen of This State | PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4 |
| Citizen of Another State | PTF <input type="checkbox"/> 2 DEF <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | PTF <input type="checkbox"/> 5 DEF <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | PTF <input type="checkbox"/> 3 DEF <input type="checkbox"/> 3 | Foreign Nation | PTF <input type="checkbox"/> 6 DEF <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input checked="" type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability PRISONER/PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
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V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. Section 12101, et seq.

Brief description of cause:

Ongoing violations of the ADA Construction Standards

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

06/19/2008

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

LIST OF DEFENDANTS

1. Pizza Hut, Inc. dba Pizza Hut #315059
2. Jehova Jireh, Inc. dba Subway #4623
3. Hanaoka Enterprises, Inc. dba Hanaoka Japanese Restaurant
4. Clementina Deniz dba Casa de Oro